

On November 6, 2012, Michigan voters will decide whether to adopt an amendment to the State Constitution regarding the expenditure of State funds for the construction of international bridges or tunnels for motor vehicles. Proposal 12-6 is the result of a citizen initiative petition to amend the Constitution. Proposal 12-6 will appear on the ballot as follows:

A PROPOSAL TO AMEND THE STATE CONSTITUTION REGARDING CONSTRUCTION OF INTERNATIONAL BRIDGES AND TUNNELS

This proposal would:

- *Require the approval of a majority of voters at a statewide election and in each municipality where "new international bridges or tunnels for motor vehicles" are to be located before the State of Michigan may expend state funds or resources for acquiring land, designing, soliciting bids for, constructing, financing, or promoting new international bridges or tunnels.*
- *Create a definition of "new international bridges or tunnels for motor vehicles" that means "any bridge or tunnel which is not open to the public and serving traffic as of January 1, 2012."*

Should this proposal be approved?

If a majority of the electors vote "yes", Proposal 12-6 will be adopted as Article III, Section 6a of the State Constitution.

Summary

The proposed constitutional amendment specifies that the people should decide whether the State may construct or finance new international bridges or tunnels. It would prohibit the State from undertaking

ownership and development of, or using State funds or resources for, new international bridges or tunnels for motor vehicles unless a majority vote of the people first determined those actions to be necessary and appropriate.

The procedure for seeking a majority vote of the people would be the same as that for submission and approval of petitions to propose, enact, and reject laws by initiative under Article II, Section 9 of the Constitution. That is, proponents would have to gather signatures of registered voters equal to at least 8% of the total vote cast for all candidates for Governor at the last general election at which a Governor was elected. A proposal seeking approval for a new international bridge or tunnel, however, would not be subject to the provision under Article II, Section 9 that allows approval by the Legislature in lieu of a vote of the people. Approval of the people for a new international bridge or tunnel would require an affirmative vote of a majority of electors in both the State and each municipality in which improvements were to be situated.

Proposal 12-6 specifies that any ambiguity in its interpretation "shall be resolved in favor of shielding the people from practical or financial burdens associated with state government ownership and development of international bridges and tunnels for motor vehicles".

Background

There has long been a discussion about the need for a new international crossing between southeastern Michigan and southern Ontario. Canadian officials and some Michigan officials and business groups have expressed a desire for a new bridge, located downriver from the Ambassador

Bridge, which connects Detroit, Michigan, and Windsor, Ontario. According to proponents of a new bridge, a crossing at the proposed location could connect more easily to expressways in both countries, especially Canada. Others, including officials of the company that owns the Ambassador Bridge, have questioned the need for an additional crossing and suggested that, if one is desired, they could build it adjacent to the current bridge.

In June 2012, the Governor of Michigan entered into an agreement with Canada to create an authority for the design, construction, operation, and maintenance of a new international crossing. (This Crossing Agreement is discussed below.) After that agreement was executed, opponents of the proposed new bridge began the initiative petition drive that resulted in Proposal 12-6.

While the ballot proposal would prohibit the State of Michigan from undertaking ownership and development of, or using State funds or resources for, new international crossings for motor vehicles without a State and local vote of the people, there is disagreement as to whether Proposal 12-6 would apply to the Crossing Agreement already entered into between Michigan and Canada.

The potential scope of Proposal 12-6 is another matter of uncertainty. This is because the definition of "new international bridges or tunnels for motor vehicles" refers to "any bridge or tunnel" that is not open to the public and serving traffic as of January 1, 2012 (emphasis added). Arguably, the constitutional amendment could apply to all bridge and tunnel projects involving State resources, regardless of whether they were international, including bridges that are currently planned but not yet built.

Crossing Agreement between Canada and Michigan

On June 15, 2012, a Crossing Agreement was executed between Canada and Michigan. The parties are Canada, as represented by the Minister of Transport; the Crossing Authority, an entity to be established by Canada pursuant to and subject to the laws of Canada after the initial Execution Date; and the State of Michigan, as represented by the Governor, and by and through the Michigan Department of Transportation, and the Michigan Strategic Fund, i.e., the "Michigan Parties".

A synopsis of the Agreement states:

"The Crossing Agreement provides a framework for a Crossing Authority established by Canada to design, construct, finance, operate and maintain a new International Crossing between Canada and Michigan, under the oversight of a jointly established International Authority with three members appointed by Canada and the Crossing Authority and three members appointed by the Michigan Parties, and with funding approved by Canada, but with no funding by the Michigan Parties. The Michigan Parties are not obligated to pay any of the costs of the new International Crossing."

According to the Agreement, all three parties (Canada, the Crossing Authority, and the Michigan Parties) have the power and authority to enter into and carry out its obligations as a party to the Agreement.

The Agreement also points out that the State of Michigan has the power and constitutional authority under Article III, Section 5 of the Michigan Constitution, to enter into and carry out its obligations as a Party to the Agreement, subject to its terms

and conditions. Section 5 of Article III of the Michigan Constitution states, in part:

"Subject to provisions of general law, this state or any political subdivision thereof, any governmental authority or any combination thereof may enter into agreements for the performance, financing or execution of their respective functions, with any one or more of the other states, the United States, the Dominion of Canada, or any political subdivision thereof unless otherwise provided in this constitution."

Fiscal Impact

Adoption of Proposal 12-6 could result in a significant cost to the State and/or local governments associated with the expense of holding an election to allow the State of Michigan to spend State funds or resources to build any new international bridge or tunnel for motor vehicles. According to the Michigan Department of State, the cost of any election is an estimated \$2,000 per voting precinct. There are approximately 5,200 voting precincts across Michigan. If voter approval were sought in conjunction with an already scheduled "general election" in November of an even-numbered year, there would be no additional costs. However, if voter approval were sought in a special election, those costs would be an estimated \$2,000 per voting precinct, or an estimated \$10.4 million total.

Regarding the interpretation of the term "new international bridges or tunnels", there is the potential that funding for the construction of new bridges elsewhere in the State could be in jeopardy. For fiscal year 2012-13, the Department of Transportation budget includes \$80.2 million for the construction of new bridges.



Senate Fiscal Agency

NOVEMBER 2012 BALLOT PROPOSAL 12-6

An Overview

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